

1 James A. McDevitt
2 United States Attorney
3 Eastern District of Washington
4 Stephanie J. Lister
5 Assistant United States Attorney
6 Post Office Box 1494
7 Spokane, WA 99210-1494
8 Telephone: (509) 353-2767

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 TIMOTHY W. HICKS,

15 Defendant.

CR-06-023-LRS

Plea Agreement

16 Plaintiff, United States of America, by and through James A. McDevitt,
17 United States Attorney for the Eastern District of Washington, and Stephanie J.
18 Lister, Assistant United States Attorney for the Eastern District of Washington,
19 and Defendant TIMOTHY W. HICKS and the Defendant's counsel, Robert R.
20 Fischer, agree to the following Plea Agreement:

21 1. Guilty Plea and Maximum Statutory Penalties:

22 The Defendant, TIMOTHY W. HICKS, agrees to plead guilty to Count 1 of
23 the Indictment filed on March 7, 2006, charging the Defendant with Possession of
24 Child Pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B).

25 The Defendant, TIMOTHY W. HICKS, understands that the charge
26 contained in the Indictment is a Class (C) felony charge. The Defendant,
27 TIMOTHY W. HICKS, also understands that the maximum statutory penalty for
28 Possession of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B), is

1 not more than 10 years; a fine not to exceed \$250,000; a term of supervised release
2 of up to life; and a \$100 special penalty assessment.

3 The Defendant, TIMOTHY W. HICKS, understands that a violation of a
4 condition of supervised release carries an additional penalty of re-imprisonment
5 for all or part of the term of supervised release without credit for time previously
6 served on post-release supervision.

7 2. The Court is Not a Party to the Agreement:

8 The Court is not a party to this Plea Agreement and may accept or reject this
9 Plea Agreement. Sentencing is a matter that is solely within the discretion of the
10 Court. The Defendant understands that the Court is under no obligation to accept
11 any recommendations made by the United States and/or by the Defendant; that the
12 Court will obtain an independent report and sentencing recommendation from the
13 U.S. Probation Office; and that the Court may, in its discretion, impose any
14 sentence it deems appropriate up to the statutory maximums stated in this Plea
15 Agreement.

16 The Defendant acknowledges that no promises of any type have been made
17 to the Defendant with respect to the sentence the Court will impose in this matter.
18 The Defendant understands that the Court is required to consider the applicable
19 sentencing guideline range, but may depart upward or downward under the
20 appropriate circumstances.

21 The Defendant also understands that should the sentencing judge decide not
22 to accept any of the parties' recommendations, that decision is not a basis for
23 withdrawing from this Plea Agreement or a basis for withdrawing this plea of
24 guilty.

25 3. Waiver of Constitutional Rights:

26 The Defendant, TIMOTHY W. HICKS, understands that by entering this
27 plea of guilty the Defendant is knowingly and voluntarily waiving certain
28 constitutional rights, including:

- 1 (a). The right to a jury trial;
- 2 (b). The right to see, hear and question the witnesses;
- 3 (c). The right to remain silent at trial;
- 4 (d). The right to testify at trial; and
- 5 (e). The right to compel witnesses to testify.

6 While the Defendant is waiving certain constitutional rights, the Defendant
7 understands the Defendant retains the right to be assisted through the sentencing
8 and any direct appeal of the conviction and sentence by an attorney, who will be
9 appointed at no cost if the Defendant cannot afford to hire an attorney. The
10 Defendant also acknowledges that any pretrial motions currently pending before
11 the Court are waived.

12 4. Elements of the Offense:

13 The United States and the Defendant agree that in order to convict the
14 Defendant of Possession of Child Pornography, in violation of 18 U.S.C. §
15 2252A(a)(5)(B), the United States would have to prove beyond a reasonable doubt
16 the following elements:

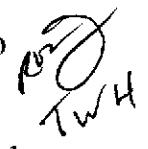
- 17 (a). First, on or about June 30, 2005 in the Eastern District of
18 Washington, the Defendant, TIMOTHY W. HICKS, knowingly
19 possessed material that contained images of child pornography,
20 as charged;
- 21 (b). Second, that the material had been mailed, shipped, or
22 transported in interstate or foreign commerce by any means,
23 including by computer, or that the material was produced using
24 materials that had been mailed, shipped or transported in
25 interstate or foreign commerce by any means, including by
26 computer; and
- 27 (c). Third, that at the time of such possession the Defendant
28 believed that such images constituted child pornography.

1 5. Factual Basis and Statement of Facts:

2 The United States and the Defendant stipulate and agree that the following
3 facts are accurate; that the United States could prove these facts beyond a
4 reasonable doubt at trial; and these facts constitute an adequate factual basis for
5 TIMOTHY W. HICKS's guilty plea. This statement of facts does not preclude
6 either party from presenting and arguing, for sentencing purposes, additional facts
7 which are relevant to the guideline computation or sentencing, unless otherwise
8 prohibited in this agreement.

9 On May 14, 2004, Detective John McGee of the Nassau County Police
10 Department in New York, while acting in an undercover capacity of a 14 year old
11 male child, and conducting undercover investigations of online sexual predators of
12 children, came into contact in a chatroom entitled "boiz4men", under the AOL
13 category of "Gay & Lesbian", with "Timbill54". "Timbill54" advised that he was
14 an older gay man, and that he resided in Las Vegas.

15 Detective McGee in his undercover capacity communicated electronically
16 through the internet, primarily via e-mail and instant messaging with "Timbill54."
17 During the contact, "Timbill54" repeatedly disseminated indecent materials to the
18 apparent minor that would be harmful to minors. He also sent the apparent minor
19 links to pornographic web sites, and transmitted pornographic videos. The video
20 images appear to depict teenage juvenile males engaged in different homosexual
21 acts, or self stimulation.

22 Detective McGee in his undercover capacity communicated with
23 "Timbill54" over a number of months, beginning on May 19, 2004, with the last
24 contact occurring on May 3, 2005. During the May 3, 2005, "chat", "Timbill54"
25 commented to the apparent minor that he would like to travel to Long Island to
26 meet with him. There was talk about keeping it a secret and that "Timball^W54" 
27 would teach the apparent minor sexual things. Tentative plans to meet during the
28 summer of 2005 were discussed. "Timbill54" asked the apparent minor if he still

1 continued his "jerk off" advising the apparent minor that he needed to keep
2 practicing and that "Timbill54" practices every day.

3 In Detective McGee's opinion, "Timbill54" began grooming the apparent
4 minor, and assumed the role of his sexual teacher, in anticipation of an actual
5 physical encounter. There were extensive conversations about meeting at a hotel
6 in the Long Island, New York area, and similar arrangements. During the course
7 of their conversations, "Timbill54" transmitted numerous indecent photographs of
8 males engaging in various types of sexual activities, the contents of such being
9 harmful to minors. Some of the photographs contained images of persons who
10 appeared that they might have been children, under the age of 18, engaged in
11 sexual acts. "Timbill54" forwarded to the apparent minor images of a penis that
12 he claimed was his own.

13 The conversations between Detective McGee in his undercover capacity
14 and "Timbill54", continued off and on from May 2004 through March of 2005.

15 Detective McGee served AOL with a subpoena for the identity of
16 "Timbill54", and the response indicated that this particular internet identity was
17 that of the following:

18 Timothy W. Hicks
19 PO Box 222
Mansfield, WA 98830

20 A booking photograph of TIMOTHY HICKS from the Chelan County
21 Regional Justice Center was compared with a photograph provided by
22 "Timbill54" to the undercover detective. It was determined by FBI that they are
23 one and the same person.

24 On June 16, 2005, S/A Floyd contacted Tom Spoonmore, subscriber to PO
25 Box 222, Mansfield, Washington. Spoonmore advised that approximately in the
26 month of June of 2003, TIMOTHY HICKS was residing in Las Vegas, Nevada,
27 and Spoonmore went to pick him up, and bring HICKS back to Mansfield, WA.
28 Spoonmore located HICKS in North Las Vegas, Nevada, near Lake Mead Blvd,

1 living with individuals that impressed Spoonmore as being homosexuals.
2 Spoonmore transported HICKS, and all of HICKS' belongings, in a U-Haul trailer,
3 back to Mansfield, Washington. HICKS then moved in with his aunt.

4 Since returning to Mansfield, WA, according to Spoonmore, HICKS has
5 resided with his Aunt, with the exception of two months during the fall of 2004,
6 when HICKS traveled back to Las Vegas, and that HICKS is currently residing
7 with his Aunt in Mansfield, Washington.

8 Between the summer of 2003 and the summer of 2004, Spoonmore allowed
9 HICKS to use a computer connected to Spoonmore's telephone line, allowing
10 HICKS internet access. Spoonmore stated that HICKS was only supposed to use
11 the computer for a couple of hours daily, but was usually on the computer the
12 entire day, occupying Spoonmore's telephone line. During the fall of 2004,
13 Spoonmore discontinued allowing HICKS the use of the telephone line. It was
14 also during this period that HICKS used Spoonmore's PO Box 222, Mansfield,
15 Washington.

16 On June 23, 2005, FBI S/A Floyd obtained a search warrant for the
17 residence on 16 N.W. Road H., Mansfield, Washington. The search warrant was
18 executed on June 30, 2005 and the FBI seized a computer and two hard drives
19 from the Defendant's residence. A forensic review of the hard drives established
20 that Hicks was in possession of over 150 images of child pornography, some of
21 the images were of children under 12, some are sadistic. Review of the images
22 sent by Hicks to the undercover agent also included at least one photograph of a
23 child under the age of 12.

24 6. The United States Agrees:

25 (a.) Dismissals:

26 At the time of sentencing, the United States agrees to move to dismiss
27 Count 2 of the Indictment, which charges the Defendant with Coercion and
28 Enticement, in violation of 18 U.S.C. § 2422(b).

1 (b.) Not to File Additional Charges:

2 The United States Attorney's Office for the Eastern District of Washington
3 agrees not to bring any additional charges against the Defendant based upon
4 information in its possession at the time of this Plea Agreement and arising out of
5 Defendant's conduct involving illegal activity charged in this Indictment, unless
6 the Defendant breaches this Plea Agreement any time before or after sentencing.

7 7. United States Sentencing Guideline Calculations:

8 The Defendant understands and acknowledges that the United States
9 Sentencing Guidelines (hereinafter "U.S.S.G.") are applicable to this case and that
10 the Court will determine the Defendant's applicable sentencing guideline range at
11 the time of sentencing.

12 (a.) Base Offense Level:

13 The United States and the Defendant agree that the base offense level for
14 Possession of Child Pornography is 18. See U.S.S.G. § 2G2.2(a)(1).

15 (b.) Specific Offense Characteristics:

16 The United States and the Defendant also agree and stipulate that the base
17 offense is increased by an additional two (2) levels because the material involved
18 a minor who had not attained the age of 12 years. See U.S.S.G. § 2G2.2(b)(2).
19 The United States and the Defendant also agree and stipulate that the base offense
20 is increased by an additional four (4) levels because the offense involved material
21 that portrays sadistic or masochistic conduct. See U.S.S.G. § 2G2.2(b)(4). The
22 United States and the Defendant also agree and stipulate that the base offense is
23 increased by an additional two (2) levels because the offense involved the use of a
24 computer. See U.S.S.G. § 2G2.2(b)(6). The United States and the Defendant also
25 agree and stipulate that the base offense is increased by an additional three (3)
26 levels because the offense involved at least 150 images. See U.S.S.G. §
27 2G2.2(b)(7)(B).
28

1 (c.) Acceptance of Responsibility:

2 If the Defendant pleads guilty and demonstrates a recognition and an
3 affirmative acceptance of personal responsibility for the criminal conduct;
4 provides complete and accurate information during the sentencing process; does
5 not commit any obstructive conduct; accepts this Plea Agreement; and enters a
6 plea of guilty no later than November 16, 2006, the United States will move for a
7 three (3) level downward adjustment in the offense level for the Defendant's
8 timely acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(a) and (b).

9 The Defendant and the United States agree that the United States may at its
10 option and upon written notice to the Defendant, not recommend a three (3) level
11 downward reduction for acceptance of responsibility if, prior to the imposition of
12 sentence, the Defendant is charged or convicted of any criminal offense
13 whatsoever or if the Defendant tests positive for any controlled substance.

14 Furthermore, the Defendant agrees to pay the \$100 mandatory special
15 penalty assessment to the Clerk of Court for the Eastern District of Washington, at
16 or before sentencing, and shall provide a receipt from the Clerk to the United
17 States before sentencing as proof of this payment, as a condition to this
18 recommendation by the United States.

19 Therefore, the United States and the Defendant agree that the Defendant's
20 final adjusted offense level would be 26 with a sentencing guideline range of 63-
21 78 months.

22 (d.) Criminal History:

23 The United States and the Defendant understand that the Defendant's
24 criminal history computation is tentative and that ultimately the Defendant's
25 criminal history category will be determined by the Court after review of the
26 Presentence Investigative Report. The United States and the Defendant have made
27 no agreement and make no representations as to the criminal history category,
28 which shall be determined after the Presentence Investigative Report is completed.

1 8. Departures:

2 There are no aggravating or mitigating factors with respect to the correct
3 calculation of the Sentencing Guidelines. The United States and the Defendant
4 agree that they will not seek either an upward or a downward departure from the
5 applicable Guidelines. Additionally, the Defendant agrees not to seek a sentence
6 below the advisory guideline range by way of a 18 U.S.C. § 3553(a) factors
7 analysis.

8 9. Incarceration:

9 The United States and the Defendant agree to recommend that the Court
10 impose a sentence at the low end of the applicable sentencing guideline range.

11 10. Criminal Fine:

12 The United States and the Defendant are free to make whatever
13 recommendation concerning the imposition of a criminal fine that they believe is
14 appropriate.

15 11. Supervised Release:

16 The United States and the Defendant agree to recommend that the Court
17 impose a 3 year term of supervised release to include the following special
18 conditions, in addition to the standard conditions of supervised release: (1) that the
19 Defendant not have contact with any child under the age of 18, without the
20 presence of an adult and approved in advance by the Probation Officer, this
21 includes prohibiting the Defendant from having any contact with any child by
22 telephone or the internet. The Defendant shall immediately report any
23 unauthorized contact with minor-aged children to the Probation Officer; (2) that
24 the Defendant allow the Probation Officer or designee to conduct random
25 inspections, including retrieval and copying of data from any computer, and any
26 personal computing device that the Defendant possesses or has access to,
27 including any internal or external peripherals. This may require temporary
28 removal of the equipment for a more thorough inspection. The Defendant shall

1 not possess or use any data encryption technique or program. The Defendant shall
2 purchase and use such hardware and software systems that monitor the
3 Defendant's computer usage, if directed by the Probation Officer; (3) that the
4 Defendant shall not reside or loiter within 1000 feet of places where children
5 under the age of 18 congregate, which includes primary and secondary schools,
6 schoolyards, parks, playgrounds, shopping malls, daycare centers, carnivals,
7 recreation centers, and arcades; (4) that the Defendant shall not possess or
8 manufacture any sexually stimulating, sexually explicit or sexually oriented
9 material including videos, magazines, photographs, computer generated
10 depictions, or any other matter that depicts "sexually explicit conduct" involving
11 children or adults, as defined by 18 U.S.C. § 2256(2). The Defendant shall not
12 enter or be present at any establishment involved in the sex industry, including
13 adult book stores, message parlors, escort services, and strip bars. The Defendant
14 shall not use any sex-related adult telephone number. The Defendant shall provide
15 all his telephone records to monitor compliance, at the direction of the Probation
16 Officer; (5) that the Defendant register as a sex offender, according to the laws of
17 each state in which the Defendant resides, is employed, or is attending school. The
18 Defendant shall provide verification of compliance with this requirement to the
19 Probation Officer; (6) that the Defendant complete a sex offender evaluation,
20 which may include periodic psychological, physiological, polygraph, and
21 completion of the ABEL assessment, at the direction of the Probation Officer; (7)
22 that the Defendant participate and successfully complete an approved state-
23 certified sex offender treatment program, including compliance with all lifestyle
24 restrictions and treatment requirements of the program. The Defendant shall allow
25 reciprocal release of information between the Probation Officer and the treatment
26 provider. The Defendant shall contribute to the cost of treatment according to the
27 Defendant's ability.
28

1 12. Mandatory Special Penalty Assessment:

2 The Defendant agrees to pay the \$100 mandatory special penalty assessment
3 to the Clerk of Court for the Eastern District of Washington, at or before
4 sentencing, pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the
5 Clerk to the United States before sentencing as proof of this payment.

6 13. Payments While Incarcerated:

7 If the Defendant lacks the financial resources to pay the monetary
8 obligations imposed by the Court, the Defendant agrees to earn the money to pay
9 toward these obligations by participating in the Bureau of Prisons' Inmate
10 Financial Responsibility Program.

11 14. Abandonment of Computer Equipment:

12 The Defendant agrees to voluntarily forfeit, abandon and relinquish all
13 right, title and interest in all the computer equipment, disks, peripherals, cameras
14 and other items seized on June 23, 2005, to the United States, and hereby agrees to
15 execute any and all forms and pleadings necessary to effectuate such forfeiture.

16 15. Additional Violations of Law Can Void Plea Agreement:

17 The Defendant and the United States agree that the United States may at its
18 option and upon written notice to the Defendant, withdraw from this Plea
19 Agreement or modify its recommendation for sentence if, prior to the imposition
20 of sentence, the Defendant is charged or convicted of any criminal offense
21 whatsoever or if the Defendant tests positive for any controlled substance.

22 16. Appeal Rights:

23 Defendant understands that he has a limited right to appeal or challenge the
24 conviction and sentence imposed by the Court. Defendant hereby expressly
25 waives his right to appeal his conviction and the sentence the Court imposes,
26 including any restitution order. Defendant further expressly waives his right to
27 file any post-conviction motion attacking his conviction and sentence, including a
28 motion pursuant to 28 U.S.C. § 2255, except one based upon ineffective assistance

1 of counsel based on information not now known by Defendant and which, in the
2 exercise of due diligence, could not be known by Defendant by the time the Court
3 imposes the sentence.

4 17. Integration Clause:

5 The United States and the Defendant acknowledge that this document
6 constitutes the entire Plea Agreement between the United States and the
7 Defendant, and no other promises, agreements, or conditions exist between the
8 United States and the Defendant concerning the resolution of the case. This Plea
9 Agreement is binding only upon the United States Attorney's Office for the
10 Eastern District of Washington, and cannot bind other federal, state or local
11 authorities. The United States and the Defendant agree that this agreement cannot
12 be modified except in a writing that is signed by the United States and the
13 Defendant.

14 Approvals and Signatures

15 Agreed and submitted on behalf of the United States Attorney's Office for
16 the Eastern District of Washington.

17
18 James A. McDevitt
19 United States Attorney

20 Stephanie J. Lister
21 Stephanie J. Lister
22 Assistant U.S. Attorney

11/17/06
Date

23 I have read this Plea Agreement and have carefully reviewed and discussed
24 every part of the agreement with my attorney. I understand and voluntarily enter
25 into this Plea Agreement. Furthermore, I have consulted with my attorney about
26 my rights, I understand those rights, and I am satisfied with the representation of
27 my attorney in this case. No other promises or inducements have been made to
28 me, other than those contained in this Plea Agreement and no one has threatened

Plea Agreement- 12

P60426JM.SLB.wpd

1 or forced me in any way to enter into this Plea Agreement. I am agreeing to plead
2 guilty because I am guilty.

3 Timothy W. Hicks
4 TIMOTHY W. HICKS
5 Defendant

11-16-06
Date

6 I have read the Plea Agreement and have discussed the contents of the
7 agreement with my client. The Plea Agreement accurately and completely sets
8 forth the entirety of the agreement between the parties. I concur in my client's
9 decision to plead guilty as set forth in the Plea Agreement. There is no legal
10 reason why the Court should not accept the Defendant's plea of guilty.

11 Robert R. Fischer
12 Robert R. Fischer
13 Attorney for the Defendant

11/16/06
Date